

ORDINANCE NO. 1870

AN ORDINANCE OF THE LODI CITY COUNCIL AMENDING LODI MUNICIPAL CODE CHAPTER 13.08 – WATER SERVICE – BY REPEALING AND REENACTING SECTION 13.08.130, “OVERSIZED MAINS”; AMENDING CHAPTER 13.12 – SEWER SERVICE – BY REPEALING AND REENACTING SECTION 13.12.180, “DOMESTIC SYSTEM SERVICE CHARGES”; ADDING SECTION 13.12.181, “DOMESTIC SEWER SERVICE CHARGES (METERED ACCOUNTS)”; AND REPEALING AND REENACTING SECTION 13.12.190, “DOMESTIC SYSTEM CAPACITY OR IMPACT FEES”; REPEALING AND REENACTING SECTION 13.12.370, “REIMBURSEMENT – OVERSIZE MAINS”; REPEALING AND REENACTING CHAPTER 15.64 – DEVELOPMENT IMPACT MITIGATION FEES – IN ITS ENTIRETY; AMENDING CHAPTER 16.24 – IMPROVEMENTS – BY REPEALING AND REENACTING SECTION 16.24.040, “STREETS”; AND FURTHER AMENDING CHAPTER 16.40 – REIMBURSEMENTS FOR CONSTRUCTION – BY REPEALING AND REENACTING SECTIONS 16.40.010, “FINDINGS AND PURPOSE,” AND 16.40.020, “IMPROVEMENTS TO BE REIMBURSED”

=====

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

**SECTION 1.** Lodi Municipal Code Chapter 13.08 – Water Service – is hereby amended by repealing and reenacting Section 13.08.130, “Oversized Mains,” in its entirety and shall read as follows:

13.08.130 - Oversized Mains.

Whenever the city requires that a water main larger than eight inches in diameter be installed in order to serve additional property or to conform to the water master plan, the applicant may apply for reimbursement from the benefiting properties that are served by the oversized pipe. A reimbursement application for the difference in cost between the actual water main to be constructed and an eight-inch diameter water main may be obtained through the city. The reimbursement shall be made in accordance with Chapter 16.40 of this code.

**SECTION 2.** Lodi Municipal Code Chapter 13.12 – Sewer Service – is hereby amended by repealing and reenacting Section 13.12.180, “Domestic System Service Charges,” in its entirety and shall read as follows:

13.12.180 - Domestic Sewer Service Charges (Un-Metered Accounts).

A. Basis. Charges for use of the domestic system shall be determined by the volume, BOD, and SS of wastes discharged. In addition, charges for preparation and maintaining the sewer master plan, expansion of the public works administration building, and expansion of the public works storage facilities are allocated based upon volume, BOD, and SS.

B. Applicability. Those residential, commercial and industrial users whose discharge of wastes classify them as a moderate-strength user and those dischargers of industrial and commercial wastes that classify them as high-strength users shall pay charges as determined in this section. Determination of the category for each specific user shall be made by the public works director.

C. Moderate-Strength Users. All moderate-strength un-metered users shall be assigned sewage service units. The minimum sewage service units assigned to any commercial and industrial user shall be 0.67 unit. Service charges for moderate-strength users shall be determined by multiplying the cost of one sewage service unit by the number of sewage service units assigned to each user.

1. Residential user sewage service units shall be based upon the number of bedrooms per dwelling unit as follows:

Number of Bedrooms	Sewage Service Units
1.	0.75
2.	1.00
3.	1.25
4.	1.50
5.	1.75
6.	2.00
7.	2.25

2. Commercial and industrial user sewage service charges shall be based on the number of sewage service units assigned to each user. The unit of measure for determining the number of sewage service units assigned to each user is as follows:

User Descriptions	Unit of Measure
1. Meeting place, religious	Each 200 seats
2. Meeting place, public	Each 100 seats
3. Hotel, motel without kitchenettes	Each 3 beds
4. Hotel, motel with kitchenettes	Each unit
5. Veterinary clinic	Each 4 employees
6. Post office	Each 15 employees
7. Funeral parlor	Each 3 employees
8. Service station with service garages	Each 2.5 pumps
9. Service station without service garages	Each 7 pumps
10. Car wash, automatic bay	20 SSU's per bay
11. Car wash, self serve bays	2 SSU's per bay
12. School, 8th grade and below	Each 20 students
13. High school	Each 15 students
14. Eating place, seating only	Each 10 seats
15. Eating place, seating and take-out	Each 7 seats
16. Eating place, "pizza parlor"	Each 35 seats
17. Eating place, take-out only	Each 5 employees
18. Lunch truck business	Each 5 employees

19. Laundry, coin-op., reg. mach.	Each 1.5 machines
20. Laundry, coin-op., big mach.	Each machine
21. Comm. laundry and dry cleaning	Each 3 employees
22. Dentist's office	Each 5 employees
23. Office, store, warehouse manufacturer, doctor's chiropractor's and X-ray offices	Each 8 employees
24. Grocery store, supermarket (having veg/fruit or butcher/meat sections)	Each 4 employees
25. Bar	Each 20 seats
26. Barber, beauty shop	Each 3 workstations
27. Hospital, convalescent home	Each 3 beds
28. Rest and retirement home	Each 3 beds
29. Mobile home park	Each 1.33 pads
30. RV dump station	Each station
31. Industrial Warehousing	Each 25 fixture units

One sewage service unit shall be assigned to each unit of measure. Fees shall be based on a minimum of 0.67 sewage service unit and tenths of one sewage service units thereafter. At the discretion of the public works director, a commercial user's service charges and/or capacity fees may be based on actual sewer discharge flows estimated by use of a water meter or other appropriate means.

D. High-Strength Users.

1. All high-strength user sewage service charges shall be determined based upon the actual quantity of flow, BOD, and SS discharged annually.

2. The sewage service charge shall be determined by multiplying the quantity of discharged flow, BOD, and SS by the cost for each characteristic.

E. Significant Users. All significant users shall be assessed two additional sewage service units in service charges to cover the city's costs of meeting Federal Pretreatment Program requirements.

**SECTION 3. Lodi Municipal Code Chapter 13.12 – Sewer Service – is hereby amended by adding Section 13.12.181, “Domestic Sewer Service Charges (Metered Accounts),” as follows:**

**13.12.181 - Domestic Sewer Service Charges (Metered Accounts).**

A. Basis. Charges for use of the domestic system shall be determined by the volume, BOD, and SS of wastes discharged. In addition, charges for preparation and maintaining the sewer master plan, expansion of the public works administration building, and expansion of the public works storage facilities are allocated based upon volume, BOD, and SS.

B. Applicability. Those residential, commercial and industrial users whose discharge of wastes classify them as a moderate-strength user and those dischargers of industrial and commercial wastes that classify them as high-strength users shall pay charges as determined in

this section. Determination of the category for each specific user shall be made by the public works director.

C. Moderate-Strength Users. All moderate-strength users shall be billed based upon their average winter water usage to approximate their sewer usage. The monthly sewer bill during the entire year will be based on the average amount of water consumed during the immediately preceding rainy season months of December, January and February. As meters are installed in existing buildings, monthly sewer fees will be converted from the SSU based fees to the average winter usage rate methodology.

D. High-Strength Users.

1. All high-strength user sewage service charges shall be determined based upon the actual quantity of flow, BOD, and SS discharged annually.

2. The sewage service charge shall be determined by multiplying the quantity of discharged flow, BOD, and SS by the cost for each characteristic.

**SECTION 4. Lodi Municipal Code Chapter 13.12 – Sewer Service – is hereby amended by repealing and reenacting Section 13.12.190, “Domestic System Capacity or Impact Fees,” in its entirety and shall read as follows:**

13.12.190 - Domestic Sewer System Capacity or Impact Fees.

The capacity fee shall cover the capital cost associated with the POTW capacity and the planning, financing, acquisition, and development of other services and facilities directly related to the utilization of capacity by the discharger. Any actual costs incurred by the city in making the physical connection (tap) shall be separate and in addition to the capacity fee described in this section.

**SECTION 5. Lodi Municipal Code Chapter 13.12 – Sewer Service – is hereby amended by repealing and reenacting Section 13.12.370, “Reimbursement – Oversize Mains,” in its entirety and shall read as follows:**

13.12.370 - Reimbursement - Oversize Mains.

Wherever the city requires that a sewer main larger than ten inches in diameter or a storm drain larger than eighteen inches in diameter be installed in order to serve additional property or to conform to the applicable master plan, the applicant may apply for reimbursement from the additional properties that are served by the oversized pipe. The reimbursement shall be based on the difference in cost between the actual pipe to be installed and a ten-inch sewer or eighteen-inch storm drain as applicable. The difference in cost shall be determined by the public works director. The reimbursement shall be made in accordance with Chapter 16.40 [of this code].

**SECTION 6. Lodi Municipal Code Title 15 – Buildings and Construction – is hereby amended by repealing and reenacting Chapter 15.64 – Development Impact Mitigation Fees – in its entirety and shall read as follows:**

15.64.010	Findings and Purpose.
15.64.020	Definitions.
15.64.030	Development Impact Funds.
15.64.040	Payment of Fees.

15.64.050	Adoption of Study, Capital Improvement Program and Fees.
15.64.060	Calculation of Fees.
15.64.080	Credit and Reimbursement for Construction of Facilities.
15.64.090	Other Authority.
15.64.100	Findings Regarding Use of Fees.
15.64.110	Fee Exemptions.
15.64.120	Fee Adjustment or Waiver.
15.64.130	Appeal Procedure.
15.64.140	Severability.

#### 15.64.010 - Findings and Purpose.

The council finds and declares as follows:

A. In order to implement the goals of the City of Lodi's general plan and to mitigate the impacts caused by new development in the city, certain public improvements must be or had to be constructed. The city council determines that development impact mitigation fees are needed to finance these public improvements and to pay for new developments' fair share of the construction costs of these improvements. In establishing the fees described in this chapter, the city council finds the fees to be consistent with its general plan and, pursuant to Government Code Section 65913.2, has considered the effects of the fees with respect to the city's housing needs as established in the housing element of the general plan.

B. The purpose of this chapter is to implement the general plan requirements set forth in this subsection and subsection A of this section and to impose mitigation fees to fund the cost of certain facilities, the demand for which is directly or indirectly generated by the type of new development proposed in the general plan, under the authority of:

1. The police power of the city granted under Article XI, Section 7, of the California Constitution;
2. The provisions of the California Environmental Quality Act, Public Resources Code, Section 21000 et seq., which in general requires that all developments mitigate environmental impacts;
3. The provisions of the California Government Code regarding general plans at Section 65300 et seq. including but not limited to the provisions of Government Code Section 65400.

C. It is further the purpose of this chapter to require that adequate provisions are made for developer-financed facilities and services within the city limits as a condition to the approval of a new development.

D. Development impact mitigation fees are established on development in the city. Development impact mitigation fees shall consist of separate fees as described in Section 15.64.030 of this chapter. The city council shall, by resolution, set forth the specific amount of the fees; describe the benefit and impact area on which the fee is imposed; refer to the specific improvements to be financed, their estimated cost and reasonable relationship between this fee and the various types of new developments; and set forth time for payment. Adoption of such fee resolutions shall be done in compliance with Government Code Sections 66016 et seq.

E. The specific improvements to be financed by the fee are described in the City of Lodi Impact Mitigation Fee Program prepared for the city by Harris and Associates, dated August,

2012, a copy of which is on file with the city clerk. The calculation of the fee is based upon the findings in the referenced study.

F. New development will generate new demand for facilities which must be accommodated by construction of new or expanded facilities. The amount of demand generated and, therefore, the benefit gained, varies according to kind of use. Therefore, a "dwelling unit equivalent" (DUE) factor that quantifies the facilities demand of different land use types in terms of their equivalence to a low density residential unit. A low density residential unit is assigned a DUE factor of 1.0 and the DUE factor for each of the other land use categories is determined based on the anticipated demand for each land use category relative to the anticipated demand for a low density residential unit.

G. The city has previously approved various development projects which have made significant financial expenditures towards completion, including the payment of the then current development impact mitigation fees; but have not obtained a building permit. The city council finds and declares that such projects should be allowed to proceed without the imposition of new development impact mitigation fees imposed under this chapter.

#### 15.64.020 - Definitions.

- A. "Acreage" means the gross acreage for fee calculation purposes of any property within the city general plan area not including the acreage of dedicated street right-of-way existing prior to development, except that the area of new dedicated street right-of-way in excess of thirty-four feet on one side of a street shall not be included in gross acreage.
- B. "Building permit" means the permit issued or required for the construction, improvement or remodeling of any structure pursuant to and as defined by the city building code.
- C. "Costs" means amounts spent, or authorized to be spent, in connection with the planning, financing, acquisition and development of a facility including, without limitation, the costs of land, construction, engineering, administration, and consulting fees.
- D. "Development" or "project" means any of the following:
  - 1. For water, sewer, storm drainage and electric impact fees: any new connection to the city system or increase in service demand;
  - 2. For streets impact fees: any project that increases traffic;
  - 3. For police, fire, parks and recreation, art in public places and general city facilities impact fees: any project generating new or increased service demand.
- E. "Facilities" means those public facilities designated in the City of Lodi Impact Mitigation Fee Program and as subsequently designated by the city council.
- F. "Land use" means the planned use as shown on the general plan land use map.
- G. "Program fee per dwelling unit equivalent" means the total program costs, for a particular category of facility divided by the total number of dwelling unit equivalents and adjusted for price changes up to the year of construction and for the cost of financing, as identified in the city of Lodi development impact fee study or subsequent update for that particular category.

- H. "Dwelling Unit Equivalent" (DUE) is the factor that quantifies the facilities demand of different land use types in terms of their equivalence to a low density residential unit. A low density residential unit is assigned a DUE factor of 1.0 and the DUE factor for each of the other land use categories is determined based on the anticipated demand for each land use category relative to the anticipated demand for a low density residential unit.

15.64.030 - Development Impact Funds.

- A. The city finance director shall create in the city treasury the following special interest-bearing trust funds into which all amounts collected under this chapter shall be deposited:

1. Water facilities;
2. Sewer facilities;
3. Storm drainage facilities;
4. Street improvements;
5. Police facilities;
6. Fire facilities;
7. Parks and recreation facilities;
8. Electrical Utility facilities;
9. General city facilities and program administration;
10. Art in public places.

- B. The fees shall be expended solely to pay the costs of facilities (including interest on interfund loans) or to reimburse developers entitled to reimbursement under this chapter. The funds for the categories listed above shall be kept separate. For purposes of this chapter, they are referred to in aggregate as the "development impact mitigation fee fund."

- C. The city manager shall have the authority to make loans among the development impact fee funds to assure adequate cash flow. Interest shall not be charged on loans within the development impact fee fund.

15.64.040 - Payment of Fees.

- A. The property owner of any development project causing impacts to public facilities shall pay the appropriate development impact mitigation fee as provided in this chapter. The amount shall be calculated in accordance with this chapter and the program fee as established by council resolution.

- B. When such payment is required by this chapter, no certificate of occupancy shall be approved for property within the city unless the development impact mitigation fees for that property are paid or guaranteed as provided in this chapter.

- C. The fees shall be paid with the approval of a certificate of occupancy or site development permit, except as provided in subsection (E) or (F) of this section.

- D. The fees may not be prepaid unless specified otherwise in a fee payment agreement or development agreement approved by the city council.

- E. Notwithstanding the above, city may collect subsequent increases in impact fees or new impact fees, unless the development project is exempt from fee increases under the terms of a fee payment agreement approved by council, a development agreement approved by council or California law.

15.64.050 - Adoption of Study, Capital Improvement Program and Fees.

A. The city council adopted the City of Lodi Impact Mitigation Fee Program dated August 15, 2012 and establishes a future capital improvement program consisting of projects shown in said study. The city council shall review that study annually, or more often if it deems it appropriate, and may amend it by resolution at its discretion.

B. The city council shall include in the city's annual capital improvement program appropriations from the development impact mitigation fee funds for appropriate projects.

C. Except for facilities approved by the public works director for construction by a property owner under Section 15.64.080 or as shown in the annual capital improvement program, all facilities shall be constructed in accordance with the schedule required by Government Code Section 66001..

D. The program fee per dwelling unit equivalent (DUE) shall be adopted by resolution and shall be automatically adjusted annually beginning in the year 2020 on January 1st. In the first adjustment year, the adjustment shall change the program fee by the same percentage as the change in the Engineering News Record 20 Cities Construction Cost Index between 2012 and 2019. Thereafter the adjustment. change the program fee by the same percentage as the annual change in the Engineering News Record 20 Cities Construction Cost Index.

15.64.060 - Calculation of Fees.

A. The development impact mitigation fees required under Section 15.64.040 are calculated as follows:

$$T = F \times \text{DUE} \times U$$

where:

T = the total mitigation fee for each category of public facility;

F = program fee per dwelling unit equivalent, per 1,000 building square feet, or per gross acre for each category as established by resolution;

DUE = the factor applicable to the use category as set forth in LMC 15.64.060 (C) and (E);and

U = number of residential units; number of 1,000 building square foot units; or number of gross acres; computed to the nearest 0.01 unit

B. The calculated fees are subject to adjustment per Section 15.64.120 of this code.

C. The DUE factors for Water and Wastewater are as set forth in the following table.

Meter Size	Water DUE Factor <sup>2</sup>	Wastewater DUE Factor
5/8" meter	0.67	0.67
3/4" meter	1.00	1.00
1" meter	1.67	1.67
1 1/2" meter	3.33	3.33
2" meter	5.33	5.33
3" meter	10.00	10.00
4" meter	16.67	16.67
6" meter	33.33	33.33
8" meter	53.33	53.33
10" meter	76.67	76.67

<sup>1</sup> From AWWA Manual M6 – Water Meters, 3<sup>rd</sup> Edition, American Water Works Association, 1986.

<sup>2</sup> Ratio of rated flow capacity relative to ¾-inch meter.

D. Electric Fees will be set according to panel size as set forth in the following table:

Electrical Fees			
Fee/Panel			
Panel Size	208 Volts	240 Volts	480 Volts
Single Phase Panel (Amps)			
60	n/a	\$248	n/a
100	n/a	\$413	n/a
125	n/a	\$516	n/a
200	n/a	\$826	n/a
400	n/a	\$1,652	n/a
600	n/a	\$2,478	n/a

Panel Size	208 Volts	240 Volts	480 Volts
Three Phase Panel (Amps)			
200	\$1,178	\$1,359	\$2,718
400	\$2,356	\$2,718	\$5,437
600	\$3,534	\$4,077	\$8,155
800	\$4,712	\$5,437	\$10,873
1,000	\$5,890	n/a	\$13,591
1,200	\$7,068	n/a	\$16,310
1,600	\$9,423	n/a	\$21,746
2,000	\$11,779	n/a	\$27,183
2,500	\$14,724	n/a	\$33,979
3,000	\$17,669	n/a	\$40,774

E. South Wastewater Trunk, Storm, Streets, Police, Fire, Parks and Recreation, General City Facilities and Art in Public Places Fees are established as set forth in the following table:

Land Use Category	Residential			Commercial		
	Low Density DUE/Unit	Medium Density DUE/Unit	High Density DUE/Unit	Retail DUE/Unit <sup>1</sup>	Office DUE/Unit <sup>1</sup>	Industrial DUE/Unit <sup>1</sup>
South Wastewater Trunk	1.00	0.84	0.70	0.93	0.77	0.41
Storm Zone 1	1.00	0.50	0.40	10.50	10.50	11.25
Storm Zone 2	1.00	0.50	0.40	10.50	10.50	11.25
Streets	1.00	0.54	0.54	1.69	1.22	0.62
Police	1.00	0.84	0.70	0.44	0.70	0.23
Fire	1.00	0.84	0.70	0.44	0.70	0.23
Parks	1.00	0.84	0.70	0.10	0.17	0.06
General City Facilities	1.00	0.84	0.70	0.44	0.70	0.23
Art in Public Places	1.00	0.84	0.70	0.44	0.70	0.23

<sup>1</sup> Storm units are per gross acre and all others are per 1,000 square feet of building space.

15.64.080 - Credit and Reimbursement for Construction of Facilities.

A. Construction of Facilities in Advance of City of Lodi Development Impact Mitigation Fee Program (Fee Program).

1. The public works director may direct or authorize the owner to construct certain facilities specified in the City of Lodi Development Impact Mitigation Fee Program (Fee Program), or portions thereof in advance of the Fee Program and as designated in the study, in lieu of all, or a portion of, the fee required by this chapter. The owner is entitled to a credit if the owner: (1) constructs the improvements, (2) finances an improvement by cash or other means approved by the council, or (3) a combination of the above. The credit to be provided to the property owner shall be determined by the public works director based on prevailing construction costs plus ten percent for engineering and administration and shall be approved by the council. The construction of a facility authorized by this section must consist of a usable facility or segment and be approved by the city and constructed in accordance with the city's public improvement design standards. The property owner must post a bond or other security in a form acceptable to the director for the complete performance of the construction before credit is given.

2. If the amount of credit is less than the amount of the otherwise applicable fee, the property owner shall pay the amount which, when added to the credit received for the construction of facilities, equals the fee obligation.

3. If the amount of credit is greater than the amount of the otherwise applicable development impact mitigation fee, the property owner shall be paid the difference only from the appropriate development impact mitigation fee fund, after the project is accepted by the city.

4. If the development impact fee funds responsible for the reimbursement do not have adequate balances to fund the credit, the City and the Developer shall enter into a reimbursement agreement. In addition to its other terms, the agreement shall provide that:

a. The general fund of the city is not liable for payment of any obligations arising from the agreement;

b. The credit or taxing power of the city is not pledged for the payment of any obligations arising from the agreement;

c. The land owner shall not compel the exercise of the city taxing power or the forfeiture of any of its property to satisfy any obligations arising from the agreement;

d. The obligation arising from the agreement is not a debt of the city, nor a legal or equitable pledge, charge, lien, or encumbrance, upon any of its property, or upon any of its income, receipts or revenues, and is payable only from the fees deposited in the appropriate city development impact mitigation fee fund;

e. The reimbursable amount shall be increased annually to include an amount attributable to interest. This amount shall be based on the change in the Engineering News Record 20 Cities Construction Cost Index from the January 1st index of the year of construction to the January 1st index of the year of reimbursement.

#### 15.64.090 - Other Authority.

This chapter is intended to establish a supplemental method for funding the cost of certain facilities and services, the demand for which will be generated by the level and type of development proposed in the city general plan. The provisions of this chapter shall not be construed to limit the power of the city council to impose any other fees or exactions or to continue to impose existing ones on development within the city, but shall be in addition to any other requirements which the city council is authorized to impose, or has previously imposed, as a condition of approving a plan, rezoning or other entitlement within the city. In particular, individual property owners shall remain obligated to fund, construct, and/or dedicate the improvements, public facilities and other exactions required by, but not limited to, the city code, public improvement design standards and other applicable documents. Any credits or reimbursements under Section 15.64.080 shall not include the funding, construction, or dedications described in this section.

#### 15.64.100 - Findings Regarding Use of Fees.

A. As required under Government Code Section 66001(d), the city shall make findings once each fiscal year with respect to any portion of the fee remaining unexpended or uncommitted in its account five or more years after deposit of the fee, to identify the purpose to which the fee is to be put and demonstrate a reasonable relationship between the fee and the purpose for which it was charged.

B. As required under Government Code Section 66001(e), the city shall refund to the current record owner on a prorated basis the unexpended or uncommitted portion of the fee, and any interest accrued thereon, for which need cannot be established.

#### 15.64.110 - Fee Exemptions.

The following developments are exempt from payment of fees described in this chapter:

- A. City projects;
- B. Projects constructed or financed under this chapter;
- C. Reconstruction of, or residential additions to single-family dwellings, but not including additional dwelling units;
- D. Property which has paid a master storm drain fee pursuant to Resolution 3618 or Ordinance No. 1440 is exempt from payment of the storm drainage impact fee except for changes in land use as described in the fee resolution.
- E. Additional exemption for development projects in progress:
  - 1. A project on a parcel (or portion of a parcel) which has, on the effective date of the ordinance codified in this chapter, received the appropriate development approval, but has not obtained a building permit and has paid appropriate mitigation fees under Resolution 3618 or Ordinance 1440, shall be exempt from imposition of the development impact mitigation fees imposed under this chapter except the sewer lift station area fees.
  - 2. For purposes of this subsection, "appropriate development approval" shall include:

- a. An approved or conditionally approved tentative map;
  - b. An approved final subdivision or parcel map;
  - c. An approved use permit when no map was required;
  - d. An approved public improvement agreement.
3. The exemption under this subsection shall not apply to changes in land use, pursuant to subsection D of this section for storm drainage impact fees.
4. The exemption under this subsection shall apply on projects which include a change in land use to a more intensive use as defined in this chapter only to the extent that the previously approved land use shall be considered an existing use and the project shall be charged the appropriate incremental increase as provided in this chapter and the fee resolution.

15.64.120 - Fee Adjustment or Waiver.

A. The owner of a project subject to a fee under this chapter may apply to the public works director for an adjustment to or waiver of that fee. The waiver of this fee shall be based on the absence of any reasonable relationship between the impact on public facilities of that development and either the amount of fee charged or the type of facilities to be financed.

B. The application for adjustment or waiver shall be made in writing and filed with the city clerk no later than ten days after formal notification of the fee to be charged. The application shall state in detail the factual basis and legal theory for the claim of adjustment or waiver.

C. It is the intent of this chapter that:

1. The land use categories are based on general plan designations which are an average of a wide range of specific land uses; thus substantial variation must be shown in order to justify a fee adjustment;
2. The public works director may calculate a fee and/or require additional improvements where the service demand of a particular land use exceeds the standards shown in the definitions or used in determining the improvements needed under the fee program;
3. The fee categories shall be considered individually; thus it may occur that a fee adjustment or waiver is made in one category and not another; and
4. Where improvements providing capacity for the subject parcel have already been constructed, a downward adjustment of the fee is not appropriate.

D. The public works director shall consider the application at an informal hearing held within sixty days after the filing of the fee adjustment or waiver application. The decision of the public works director is appealable pursuant to Section 15.64.130.

E. The applicant bears the burden of proof in presenting substantial evidence to support the application. The public works director shall consider the following factors in its determination whether or not to approve a fee adjustment or waiver:

1. The factors identified in Section 66001:
  - a. The purpose and proposed uses of the fee,

- b. The type of development,
  - c. The relationship between the fee's use and type of development,
  - d. The need for improvements and the type of development, and
  - e. The amount of the fee and the portion of it attributable to the development; and
2. The substance and nature of the evidence including the development impact fee study and the applicant's technical data supporting its request. The applicant must present comparable technical information to show that the fee is inappropriate for the particular development.

#### 15.64.130 - Appeal Procedure.

- A. The public works director is responsible for administering, collecting, crediting, adjusting, and refunding development fees. A decision by the public works director regarding a fee imposed under this chapter is appealable in accordance with this section. A person seeking judicial review shall first seek an appeal under this section.
- B. A person appealing a decision under this chapter shall file a request with the public works director who is responsible for processing the appeal. The appeal shall be in writing, stating the factual and legal grounds, and shall be filed within ten calendar days following the decision of the public works director being appealed.
- C. The public works director shall notify the city manager of the appeal. The city manager shall set the matter for hearing before the city council and notify the person appealing in writing of the time and place.
- D. The city council shall conduct the hearing, prepare written findings of fact and a written decision on the matter, and shall preserve the complete administrative record of the proceeding. The council shall consider all relevant evidence presented by the appellant, the public works director or other interested party.
- E. The decision of the city council is final; it is reviewable by a court under Code of Civil Procedure Section 1094.5.
- F. The city adopts the Code of Civil Procedure, Section 1094.5, for the purposes of judicial review under this section. A petition seeking review of a decision under this chapter shall be filed not later than the ninetieth day following the date on which the decision of the hearing officer becomes final.

#### 15.64.140 - Severability.

If any provision or clause of the ordinance codified in this chapter or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other ordinance provisions or clauses or applications thereof which can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses of the ordinance codified in this chapter are declared to be severable.

**SECTION 7. Lodi Municipal Code Chapter 16.24 – Improvements – is hereby amended by repealing and reenacting Section 16.24.040, “Streets,” in its entirety and shall read as follows:**

**16.24.040 - Streets.**

A. The subdivider shall dedicate and improve all streets, including curbs, gutters, sidewalks and street pavement in accordance with adopted city policies.

B. If street improvements exist that do not meet existing city standards or are inadequate or a hazard to the general public, then these improvements shall be reconstructed to current city standards.

C. The subdivider or developer shall be reimbursed for excess width street construction and right-of-way or for construction or permanent improvements which front adjacent property. Reimbursement shall be made by private reimbursement agreement in accordance with Chapter 16.40. For purposes of this section excess width streets are defined as:

1. New streets over sixty-eight feet in width;
2. Widening of existing street in excess of one half of the adjacent side of the right of way.

**SECTION 8. Lodi Municipal Code Chapter 16.40 – Reimbursements for Construction – is hereby amended by repealing and reenacting Section 16.40.010, “Findings and Purpose”; and Section 16.40.020, “Improvements to be Reimbursed,” in their entirety and shall read as follows:**

**16.40.010 - Findings and Purpose.**

The council hereby finds and declares as follows:

A. Construction of new streets and water, sewer and storm drains often benefits other properties. Such benefit may occur through the provision of supplemental capacity (oversize lines) or installations across or opposite unserved property which would be required to make such improvements upon development or service connection.

B. The State of California, in Government Code Sections 66485 through 66489 requires that the city either pay for or enter into an agreement to reimburse the installing party, including an amount attributable to interest for such installations. To pay the costs as required by the reimbursement agreement, the city may collect funds from the other properties which benefit from such installations.

C. The city has adopted a development impact mitigation fee ordinance (Chapter 15.64) which provides for reimbursement and collection of funds from the benefiting parcels under only a portion of the circumstances described in subsection A of this section.

D. The purpose of that chapter is to identify the improvements which are reimbursable under the development impact mitigation fee program and to provide a uniform reimbursement procedure for the cost of improvements which are to be reimbursed from other properties. For purposes of this chapter, "applicant" means the owner of the property for which the improvements are being installed or are required to be installed per the city code.

16.40.020 - Improvements to be Reimbursed.

A. The cost of the following improvements shall be reimbursed from the benefiting parcels. The terms of the reimbursement shall be in accordance with Chapter 15.64:

1. Oversize water mains and major crossings required per Chapter 13.08.
2. Oversize sewers and storm drains required per Chapter 13.12
3. Excess width street construction and right-of-way required per Chapters 15.44 and 16.24.

B. The cost of other improvements which benefit other property or would be required of that property upon development, shall be reimbursed in accordance with this chapter.

SECTION 9. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 10. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the city, or any officer or employee thereof, a mandatory duty of care toward persons or property within the city or outside of the city so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

SECTION 11. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The city council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 12. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect 30 days from and after its passage and approval.

Approved this 20<sup>th</sup> day of February, 2013



ALAN NAKANISHI  
Mayor

Attest:



RANDI JOHL  
City Clerk

=====

State of California  
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1870 was introduced at a regular meeting of the City Council of the City of Lodi held February 6, 2013, and was thereafter passed, adopted, and ordered to print at a regular meeting of said Council held February 20, 2013, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Katzakian, Mounce, and  
Mayor Nakanishi

NOES; COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Johnson

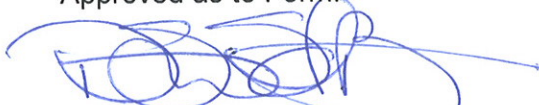
ABSTAIN: COUNCIL MEMBERS – None

I further certify that Ordinance No. 1870 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.



RANDI JOHL  
City Clerk

Approved as to Form:



D. STEPHEN SCHWABAUER  
City Attorney